

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF NEW MEXICO,

Plaintiff,

vs.

No. CR 20-1481- JB

JOSHUA E. SALDANA,

Defendant.

**DEFENDANT SALDANA'S UNOPPOSED MOTION TO CONTINUE
TRIAL AND DEADLINES**

COMES NOW Defendant Joshua E. Saldana, by and through his attorney of record Martin Lopez III, P.C. (Martin Lopez, III), and hereby moves the Court for an Order continuing the Trial currently scheduled for the March, 2021 trial calendar (Doc. 18) and associated deadlines stated within the Court's previous Order. As grounds, Defendant states:

1. Defendant was arrested on October 9, 2020 and charged by Indictment filed on July 14, 2020 with Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. § 922(g)(1) and 924. The alleged acts took place in Bernalillo County, in the District of New Mexico on or about April 11, 2020. (Doc. No. 2).

2. Undersigned Counsel was appointed on October 13, 2020 to represent Defendant Saldana in accordance with the Criminal Justice Act. (Doc. 7).

3. Defendant was arraigned before Magistrate Judge B. Paul Briones on October 15, 2020. (Doc. 12). The Court set a November 4, 2020 deadline for filing pre-trial motions.

4. On November, 2020 this Court scheduled and notified Defendant of the Jury Selection/Trial (March, 2021 trial calendar) and associated deadline for pre-trial motions in this matter. (Doc. 18).

5. At this time, Counsel for Defendant has reviewed discovery from the Government related to this matter and is continuing to seek further evidence that may be in existence. No motions or pleadings have been filed on behalf of Mr. Saldana. Counsel respectfully submits that he cannot be

expected to make any determination as to what, if any, pre-trial motions need to be filed on Defendant's behalf without having had the opportunity to complete the discovery and investigation processes.

6. Plea negotiations are in the process in this matter and the parties require additional time to attempt to negotiate a resolution of this matter short of trial.

7. Counsel for Mr. Saldana contacted United States Probation to perform an assessment to determine if Mr. Saldana qualifies for an enhancement under the Armed Career Criminal Act, 18 U.S.C. § 924(e) based upon Missouri and Texas convictions as reflected in his bail report. It is recommended that a formal Form 13 Report would be more comprehensive than USPO's assessment.

8. Counsel has requested of Mr. Saldana, who is housed outside the Albuquerque area, his permission to file the appropriate pleadings to seek Court approval for a Form 13 Report and as of the filing of this motion, has not received a response.

9. AUSA Niki Tapia-Brito was contacted and is unopposed to continuing trial and all deadlines by sixty days from the granting of Mr. Saldana's contemplated motion for Form 13 Report.

10. Thus, good grounds exist for continuing trial and all deadlines by sixty days pursuant to *US v. Toombs*, 574 F.3d 1268 (10th Cir. 2009).

11. This is the second request by Counsel for Defendant, who at this stage of representation of Defendant, is working diligently to complete the discovery, investigation, and plea negotiation processes in preparation of a defense strategy.

12. Pursuant to 18 U.S.C. §3161(h)(7)(A), the Defendant's stated need for a continuance is in the best interests of justice and outweighs the best interests of the public and the Defendant in a speedy trial. Pursuant to 18 U.S.C. §3161(h)(7)(B)(iv), continuing trial and deadlines by sixty days from motion for Form 13 Report will allow the reasonable time necessary for counsel to continue to pursue discovery; to meet with the Defendant in formulation of a defense strategy; to determine what, if any, pre-trial motions need to be filed; for further effective pre-trial preparation; and to allow

the parties the opportunity to continue in their efforts to use their and the Court's resources efficiently by attempting to resolve the case, taking into account the exercise of due diligence

13. Mr. Saldana is currently under indictment in the State of New Mexico and, upon information and belief, in the State of Missouri as well. Upon information and belief, he has been advised that the Interstate Agreement on Detainers (18 U.S.C. Appx. 2) ("IAD") may apply to his case and require that the above-captioned case be resolved within a particular time limit. By requesting a continuance of the trial date in the above-captioned case, it is in his best interest to waive his right to be brought to trial in this matter within any applicable time limits under the IAD.

14. The parties respectfully request that the Court find, pursuant to 18 U.S.C. §3161(h)(7)(A) that, if the Court grants this motion, all time between the date of the order granting the continuance to the next trial date be excluded for purposes of the Speedy Trial Act.

15. Based upon a balancing of those considerations, the interests of the parties would not be prejudiced by the continuance. Indeed, the interests of justice would be substantially advanced by continuing trial and all deadlines for sixty days for the reasons set forth above.

16. Counsel also respectfully submits that continuing trial and all deadlines for sixty days as requested herein is necessary to provide effective assistance of counsel to Defendant, and a denial of the extension and continuance would deny Defendant the time required to enable the government and Defendant to pursue settlement negotiations, to review discovery and to prepare a proper defense.

17. Counsel for Mr. Saldana files this motion to timely comply with the pretrial deadlines and orders as contained within the Court's Notice of Hearing.

18. Mr. Saldana is aware of the pre-trial and trial deadlines and understands that the filing of this Motion would be forthcoming and is in his best interests. Undersigned Counsel submits Mr. Saldana waives the time limits set forth within the Speedy Trial Act, 18 U.S.C. § 3161(c)(1) and the Sixth Amendment of the United States Constitution in making this request.

19. Counsel will supplement this motion, if necessary, to present Defendant's position if it is contrary to his formally waiving the time limits set forth within the Speedy Trial Act, 18 U.S.C.

§ 3161(c)(1) and the Sixth Amendment of the United States Constitution in making this request. Nevertheless, Counsel for Mr. Saldana submits he gives sufficient reasoning in his motion to continue to satisfy *USA v. Toombs*, 574 F.3d 1262 (10th Cir. 2009).

20. The ends of justice are best served by granting this extension and continuance as it is anticipated that the case will require additional time sufficient to complete either pretrial investigation or a negotiated disposition. The statements and averments made within this motion are not made for undue delay, but rather to provide Defendant with effective assistance of counsel.

WHEREFORE, Counsel respectfully requests that the Court enter an Order continuing the Trial currently scheduled for March , 2021 trial calendar (Doc. 18) for a period of at least sixty days and extending all deadlines accordingly.

Respectfully submitted,

MARTIN LOPEZ, III
A Professional Corporation

Electronically filed February 1, 2021
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 1st of February, 2021, I filed the foregoing pleading electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing to the following:

Niki Tapia-Brito, AUSA
E-Mail: niki.tapia-brito@usdoj.gov

Electronically filed February 1, 2021
Martin Lopez, III